**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.1893 OF 2005**

Mr. Rakesh Jain ... Petitioner.

V/s.

The State of Maharashtra & Ors. ... Respondents.

**AND**

**CRIMINAL WRIT PETITION NO. 1894 OF 2005**

Mr. Sanjay Jain. ... Petitioner.

V/s.

The State of Maharashtra & Ors. ... Respondents.

Mr.Ganesh Gole with Mr. Amol Patankar, for the Petitioners in both the Petitions.

Ms. Rekha Tawade, i/b M/s. M.V. Kini & Co. for the Respondent No.2.

Mr.U.V. Nikam, A.P.P. for the State.

**CORAM : A.S. OKA, J.**
**DATE : 05th SEPTEMBER, 2006.**

**P.C. :**

1. Heard learned Counsel appearing for the Petitioners. The Second Respondent in both the Petitions is the complainant in a complaint under Section 138 and 141 of the Negotiable Instruments Act, 1881. The Petitioners are the accused persons in the complaint. The challenge in these Petitions is to an order dated 18th June 2005 passed by the learned Metropolitan Magistrate by which the original complainant has been permitted to lead secondary evidence. The submission of the learned Counsel for the Petitioners is that no foundation was made for leading

secondary evidence by invoking provisions of Section 65(c) of the Indian Evidence Act. It is submitted that no reasons are assigned for allowing the application for leading secondary evidence. The learned Counsel appearing for the original complainant has supported the impugned order.

2. In the application made by the complainant for seeking permission to lead secondary evidence it is asserted that the original documents such as cheques, memo and office copy of the notice were presented to the Trial Court at the time of verification of the complaint and the same were perused by the learned Trial Judge. It is stated that the Office of the Advocate appearing for the complainant underwent renovation and during the renovation, the file consisting of original documents was lost/misplaced and even after diligent search by the staff members of the concerned Advocate, original documents could not be traced. In the impugned order the learned Judge has referred to affidavit in support of the application. Considering the ground made out in the application, I find no error in the impugned order by which complainant has been permitted to lead secondary evidence.

3. No case is made out for interference. The Petitions are rejected.

4. All contentions of the parties on merits of the pending complaints are kept open.

**JUDGE**